
ACCESS TO INFORMATION

1. The purpose of this policy is

To establish the principles that apply, and Council's approach to, disclosure of information and rights of public access to documents.

Council is subject to NSW legislation regarding disclosure of information, in particular the Local Government Act, Freedom of Information Act, and the Environmental Planning and Assessment Act. It also is subject to the NSW Privacy and Personal Information Protection Act and Health Records Information Privacy Act that establish standards for fair information handling practices for personal and health information.

The Commonwealth Copyright Act may apply in some circumstances to limit the copying of certain documents held by the Council.

2. Policy statement

Council is committed to:

- Openness and transparency in the conduct of its public functions.
- Pro-active disclosure and dissemination of information about operations, plans and decisions or information that will enhance quality of life and economic development of the community.
- Provision of access to Council documents unless disclosure in a particular case would be contrary to the public interest.

3. Principles

Council will promote disclosure and dissemination of information about operations, plans and decisions, and information that promotes community advancement on its website wherever practicable, and will facilitate public access through this and other appropriate mediums.

Documents required by law to be available for public inspection will be posted on the website, unless internet access poses an unacceptable risk of interference with privacy through potential data gathering and matching techniques.

Any person is entitled to have information about their place of residence suppressed from documents available for inspection where disclosure would endanger personal safety, or removed from any register available for public inspection in accordance with the NSW Privacy and Personal Information Protection Act.

Other Council documents not posted on the website will be available for inspection unless disclosure on balance is contrary to the public interest.

Copying of some documents may be restricted where the Copyright Act imposes limitations.

Council Guidelines on Access to Information will list the types of documents available including public registers available for inspection.

The Guidelines will also list the categories of documents not available because of legislative restrictions or because disclosure is likely to be contrary to the public interest. Documents of this kind include those that contain information about the personal affairs of other ratepayers, commercially sensitive information, or information which if disclosed would have an adverse effect on Council's law enforcement or other functions, such as the identifying particulars of complainants.

Inspection of Council documents in accordance with the Local Government Act is free of charge, or on payment of reasonable copying charges.

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest.

Any member of the public may also lodge an application under the Freedom of Information Act, which will be dealt with in accordance with the Act's provisions. FOI applications will not be required where documents are otherwise available in accordance with this policy and associated guidelines.

Any individual also has a right to know what personal or health information Council holds about him or her, to access that information in accordance with the provisions of the NSW Privacy and Personal Information Protection Act and the NSW Health Records and Information Privacy Act, and to amend that information in certain circumstances.

The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.

4. Amendments

Nil

5. Authorisation

Council adopted the policy on 14 November 2006

This policy is due for review on 14 November 2008.

6. Who is responsible for implementing this policy?

Public Officer/ Director Corporate Services

7. Document owner

Director Corporate Services

8. Dataworks links

Under subject:
Policy Register
Access to Information
Privacy Policy

9. Legislation and references

Local Government Act (s 12)
Environmental Planning and Assessment Act
Freedom of Information Act
Privacy and Personal Information Protection Act
Health Records and Information Privacy Act
Copyright Act

Warringah Council

Guidelines on Information Access

To be read in conjunction with Council's Access to
Information Policy GOV-PL900

Introduction

These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. These guidelines relate not only to written information, or information held within another format, such as within a computer system but also any information given out face to face, or via a telephone or email.

Council is committed to proactive dissemination of information about the conduct of its public functions and information that will assist community advancement.

Documents required to be available for public inspection will, where practicable, be made available on Council's website.

Council will deal with requests to inspect other documents in accordance with the Local Government Act (LGA) free of charge but charges may apply for photocopies, and for any additional services which go beyond the provision of access to identified documents.

The rights of access under the LGA are to specified documents listed in Section 12 of the Act, and to other documents held by the Council unless disclosure is, on balance, contrary to the public interest.

While any application will be considered on its merits Council may refuse access where requests are of a general nature, for example for access to all Council documents of a certain kind, or all documents held relating to a particular subject or matter, depending on the time involved in location, collation and assessment and the nature of the documents requested.

There are additional rights of access to documents held by the Council under the NSW Freedom of Information Act (FOIA). Any applications will be processed in accordance with the Act's requirements and a determination made to release the documents, or refuse access, on the basis of the exemption provisions in the Act. Charges for FOI applications are in accordance with guidelines issued by the Premier and include a \$30 application fee and additional charges in some circumstances. An FOI application is not required where documents can otherwise be made available.

An individual also has rights to access and amend the personal and health information held by Council about him or her under the NSW Privacy and Personal Information Protection Act (PPIPA) and the NSW Health Records and Information Privacy Act (HRIPA). Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the FOIA which provides for consultation with any other affected parties prior to disclosure of information concerning their personal or business affairs.

Privacy Legislation and Access to Council Information and Documents

The privacy acts referred to above also apply to the collection, storage, use and disclosure of personal and health information by Council. The acts set out principles for the handling of this type of information.

Full details of the acts and Council's obligations are set out in the Privacy Management Plan.

It is not a breach of the privacy principles to disclose personal or health information where this is in accordance with the acts, (eg where disclosure is consistent with the purpose for which the information was collected, or where the person was aware that particular information is usually disclosed) or where another act or law requires, permits or contemplates disclosure.

Disclosure of documents required to be made available for public inspection by the Local Government Act, the Environmental Planning and Assessment Act or any other act, of disclosure under the FOI Act is not contrary to privacy legislation.

Where access to other documents is requested and a judgment needs to be made about whether disclosure, on balance, is contrary to the public interest, privacy may be a consideration if personal information about another person is involved. Relevant factors include the nature of the information, and the degree to which disclosure involves significant privacy issues, and any public interest that would be advanced by disclosure. Council may need to be able to explain considerations taken into account in deciding to disclose personal information to someone other than the person concerned.

Council Documents Available for Inspection

The following documents are available for inspection as required by Section 12(1) of LGA and can be accessed on Council's website or from Customer Services:

Documents About the Council

- The Model Code prescribed under Section 440(1) of the LGA and the Code of Conduct adopted by the Council under Section 440(3).
- The council's code of meeting practice.
- Annual report.
- Annual financial reports.
- Auditor's report.
- Management plan.

- EEO management plan.
- The council's policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors.
- Agendas and business papers for council and committee meetings (but not including business papers for matters considered when part of a meeting is closed to the public).
- Minutes of council and committee meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting.
- Codes referred to in this Act: The Building Code of Australia and the Food Industry Code.
- Any annual reports of bodies exercising delegated council functions. (*List any such bodies*).
- The statement of affairs, the summary of affairs and the register of policy documents required under the FOIA 1989.
- Any reports by a representative of the Department of Local Government presented to a meeting of the council in accordance with section 433.

Documents About Councillors, Candidates and Designated Office Holders

The following documents are available for inspection by appointment with Council's Public Officer.

- Returns of the interests of councillors, designated persons and delegates.
- Returns as to candidates' campaign donations.

Documents About Development Applications and Related Matters

- Applications under Part 1 of Chapter 7 of the LGA for approval to erect a building, and associated documents. These documents concern building applications which were discontinued in 1998. Any relevant documents relate to the prior period.
- Development applications (within the meaning of the Environmental Planning and Assessment Act 1979 (EPA)) and the documents lodged with the application or subsequently requested by Council of the applicant. These documents include the statement of environmental effects where required. Certain documents such as those that show the internal lay out and design of a residential building or contain sensitive commercial information are not available.

Council treats any submissions and objections received in response to an advertised or notified development as public documents. These documents are vetted for content prior to posting on the website.

Internal working documents relating to an application, and the delegation of authority report, are not available for public inspection until the DA is finalised.

Council also maintains a DA Register which is available for public inspection.

After a decision on a DA has been made, the Register and documents specified in the Environmental and Planning and Assessment Regulation 2000 (see Appendix) continue to be available for public inspection.

- Council's Local Approvals Policy.
- Records of approvals granted, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals. This information is contained in the Register available for public inspection.
- Records of building certificates under the EPA 1979 are available in the Register of Building Certificates.
- Plans of land proposed to be compulsorily acquired by the council.
- Leases and licenses for use of public land classified as community land.
- Plans of management for community land.
- Environmental planning instruments, development control plans and plans made under section 94AB of the EPA 1979 applying to land within the council's area.
- Section 94 Register of Contributions required in connection with approval of a development application - available in combination of hard copy & electronic copy & accessible to the public.
- Register of Construction Certificates.
- Register of Complying Development Certificates.
- Register of Subdivision Certificates.

Public Registers

In addition to registers mentioned above, Council maintains other registers which are required by law to be available for public inspection.

Where the public register contains personal or health information, Council is required to ensure that access by a member of the public is for a purpose consistent with the purpose for which the register exists. The Local Government Code of Practice issued under the Privacy and Personal Information Protection Act (PPIPA) permits Council to provide access to such registers by way of inspection on Council premises and for the copying of an entry or page in the register without regard to the purpose of the person who seeks access.

Council reserves the right to seek to satisfy itself about the purpose of access and to require a statutory declaration from the person seeking access that personal information will only be used for a specified lawful purpose.

Council maintains some registers which are not available for public inspection. Particular entries in these registers, for example from Council's Rates Record and the Register of Impounded Items required by the Impounding Act, are available to any person. In the case of an application for a certificate of an entry in the Rates Record under Section 603 of the LGA, a charge is payable.

Access to Other Documents Held by the Council

Other Council documents are available for inspection under Section 12 of the LGA unless disclosure is, on balance, contrary to the public interest. Any application must be received in writing and will be processed promptly and within the agreed timeframe. The request should specify the documents sought, with a reference to any time or date limitations.

Any application will be considered on its merits and considered in the light of the obligation to make documents available unless public interest considerations favour the withholding of the document(s).

Information and Documents Not Usually Available

Information about the name of a property owner is in the public domain through internet access to the register maintained by the NSW Land and Property Information Service. Council holds information about property ownership for the purpose of carrying out its functions. Council policy is not to make available information about the name of a property owner except in emergency circumstances or where the enquirer can establish a clear need to know.

Council will not supply bulk property data to third parties for the purposes of direct marketing.

Documents listed below will not usually be available because they are excluded from the right to access by an express provision in the LGA, or Council has concluded that disclosure of such documents, or documents containing information of the kind indicated would, in the usual case, be contrary to the public interest. However any request for Council documents under Section 12 or the FOI Act will be dealt with in

accordance with the provisions of the legislation which require an officer to make a determination on each application.

Documents Not Available Because of Provisions in LGA

- Papers submitted to Council for consideration in a closed session.
- Documents containing information about personnel matters concerning particular individuals, the personal hardship of any resident or rate payer, trade secrets or other sensitive commercial information, or where disclosure would found an action for breach of confidence.
- Documents that contain information the release of which would constitute an offence against an act.

Other Documents Not Available

- Documents or parts of documents which would reveal the identifying particulars of persons who provide information to Council in connection with its law enforcement and regulatory responsibilities, or who otherwise contact Council about matters of interest or concern, including complaints about other persons conduct or activities, and matters that require investigation by Council.
- Documents which reveal confidential communications between the Council and its legal advisers, or documents which have been prepared by Council officers or others for the dominant purpose of use in proposed or anticipated legal proceedings.
- Documents, the release of which are likely to endanger the life or safety of any person, or the security of any building or structure, or which would prejudice the conduct of a lawful investigation by Council or another authority.
- Documents concerning Council functions or operations where disclosure would have a prejudicial effect on Council's property or financial interests, or would otherwise have an adverse effect on its regulatory functions, or its capacity to operate in an efficient and effective manner.
- Council working documents prepared or received in connection with its decision making functions, prior to the making of a decision by Council, a committee of Council, or an officer exercising delegated authority.

It should be noted that access through verbal advice as to the content of documents listed above is also not available.

Large General Requests for Access to Documents

Broad, general requests for a large number of documents, for example all documents of a certain kind, or documents held on a number of different Council files, or which otherwise require a substantial allocation of Council resources, may be refused after consideration of the public interest factors involved by Council's Public Officer. The Officer may in the light of an assessment of the work involved in identifying, locating, collating and assessing a large number of Council documents, conclude that access should be refused on the grounds that the substantial diversion of Council resources necessary to deal with the application would, on balance, be contrary to the public interest. The Public Officer shall, in reaching such a decision take into account the following:

- an assessment of the work and time involved in responding to the application.
- the extent to which the work involved in dealing with the request would result in Council resources being diverted from dealing with other access requests, or from other important functions.
- the nature of the documents requested and any public interests to be advanced by disclosure generally, or disclosure to the particular applicant. Council acknowledges there is a public interest in disclosure of documents about Council operations and the exercise of its functions, and in a particular applicant gaining access to documents where there is a strong and justifiable right to know. However the right to access documents free of charge to an individual also requires consideration of the effect the processing of such an application may have on the rights of others, and on the efficient and effective use of Council resources in the interests of all ratepayers.

Refusal of Access

Where access to documents is refused under the LGA, Council will advise the applicant in writing of the reasons for the decision. In the case of refusal on grounds that dealing with the request would involve the substantial diversion of Council resources, the Public Officer will provide details to the applicant in writing, including an estimate of the time involved in responding to the application and consideration of the other factors mentioned in these guidelines.

Council will review any decision to refuse access after three months and if the decision is affirmed, will at the request of the applicant, undertake a further review three months after that date.

Any applicant dissatisfied with Council's handling of a request for documents under the LGA may complain to the NSW Ombudsman or seek legal redress in the Land and Environment Court.

The Public Officer shall provide Council with a quarterly report on requests for access to documents under the LGA and in the case of any refusal of access provide brief information (which does not identify the applicant) about the request and the reasons for refusal.

Copyright

Copyright issues may arise when requests are made for copies of documents held by the Council. The Commonwealth Copyright Act (1968) takes precedence over State legislation. Therefore the right to copy documents under the Local Government Act does not override the Copyright Act.

If Council commissions a report etc from a consultant it will be under the terms of the contract whether it can be copied.

With regard to documents supplied with development applications, Council's development application form includes a statement whereby applicants give their permission to allow documents included with a development application to be accessed should an application under Section 12 or Freedom of Information be submitted in relation to the development application.

Freedom of Information Act

Any person is entitled to seek access to documents under the FOI Act. Charges for access are as set out in guidelines issued by the NSW Premier. The application fee is \$30. If the request is for access to documents containing information concerning the personal affairs of the applicant, no additional charges apply for work involved in dealing with the application up to twenty hours. Any additional time is chargeable at \$30 per hour. All the time involved in dealing with other types of requests is chargeable at \$30 per hour. Council may also, in appropriate cases, refuse access on the grounds that the work involved in dealing with the application would require the substantial and unreasonable diversion of Council resources.

Any applicant who can demonstrate financial hardship or that there are strong public interest factors in gaining access to the requested documents, may seek a rebate of up to 50% of the fees and charges.

Any FOI applicant may seek internal review of a Council determination, complain to the Ombudsman and/or seek independent review by the NSW Administrative Decisions Tribunal.

The FOI Act includes various exemption provisions. Documents not available when requested under the LGA are unlikely to be available if sought under the FOIA but any application will be dealt with on its merits. The FOIA requires consultation with

individuals or companies prior to disclosure of information concerning personal or business affairs.

RESPONSIBILITIES

By virtue of S343 of the LGA the Public Officer, who at Warringah Council has the responsibility of assisting people to gain access to documents of the Council. The education and training of Council staff is the responsibility of the General Manager. Staff dealing with requests for documents will be properly trained in, and conversant with Council's obligations under the LGA, PPIPA and FOI.

APPENDIX

Documents that are available to the public:**Based on s 12 of LG Act**

- the council's code of conduct
- the council's code of meeting practice
- annual report
- annual financial reports
- auditor's report
- management plan
- EEO management plan
- the council's policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors
- the council's land register
- register of investments
- returns of the interests of councillors, designated persons and delegates
- returns as to candidates' campaign donations
- agendas and business papers for council and committee meetings (but not including business papers for matters considered when part of a meeting is closed to the public)
- minutes of council and committee meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting
- any codes referred to in this Act
- register of delegations
- annual reports of bodies exercising delegated council functions
- applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents
- development applications (within the meaning of the [*Environmental Planning and Assessment Act 1979*](#)) and associated documents (interpreted by the Dept Local Government as Development application, statement of environmental effects and site plan showing only external elevations)

- local policies adopted by the council concerning approvals and orders
- records of approvals granted, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals
- records of building certificates under the [Environmental Planning and Assessment Act 1979](#)
- plans of land proposed to be compulsorily acquired by the council
- leases and licences for use of public land classified as community land
- plans of management for community land
- environmental planning instruments, development control plans and plans made under section 94AB of the [Environmental Planning and Assessment Act 1979](#) applying to land within the council's area
- the statement of affairs, the summary of affairs and the register of policy documents required under the [Freedom of Information Act 1989](#)
- Departmental representatives' reports presented at a meeting of the council in accordance with section 433
- the register of graffiti removal work kept in accordance with section 67C.

Based on Clause 266 of EP&A Regulation

- a) [development application](#),
- (b) relevant section 81 notice to the applicant,
- (c) any instrument by which some other development consent or existing use right has been modified or surrendered,
- (d) the decision of the Land and Environment Court, in the case of a development consent granted by the Court on appeal from the determination of the council,
- (e) the Minister's determination of the application, in the case of an application determined by the Minister for State significant development or an application determined by the Minister under section 80 (7) of the Act,
- (f) any recommendations made by relevant employees of the council with respect to the determination of the application,

- (g) if the development consent has been revoked, modified or surrendered the instrument of revocation, modification or surrender,
- (h) if a notice has been published in respect of the development consent as referred to in section 101 of the Act, the page of the newspaper in which the notice was published,
- (i) the notification of the determination to issue a construction certificate relating to the consent and a copy of the certificate and any related plans, specifications and any other documents that were forwarded to the council,
- (j) the notification of the appointment of the principal certifying authority and the notification of the commencement of building or subdivision work relating to the development the subject of the consent,
- (k) the notification of the determination of an application for an occupation certificate relating to any building the subject of the consent,
- (l) the notification of the determination of an application for a subdivision certificate relating to any subdivision the subject of the consent and the endorsed plan of subdivision,
- (m) the notification of the determination of any application for a compliance certificate relating to the development the subject of the consent and any relevant plans and specifications and other documents relating to the compliance certificate,
- (n) the decision of the Land and Environment Court in the case of an occupation certificate, subdivision certificate or construction certificate issued by the Court on appeal from a determination of the council,
- (o) details of approved alternative solutions relating to construction certificates or compliance certificates together with details of the assessment methods used to establish compliance with the relevant performance requirements.

Based on Clause 267 of EP&A Regulation

For a complying development certificate whether or not the application is made to the council and each complying development certificate whether or not the certificate is issued by the council:

- (a) the determination of the application for a complying development certificate including any related plans and specifications,

- (b) if a notice has been published in respect of the complying development as referred to in section 101 of the Act, the page of the newspaper in which the notice was published,
- (c) the notification of the appointment of the principal certifying authority and the notification of the commencement of building or subdivision work relating to the development the subject of the complying development certificate,
- (d) the notification of the determination of an application for an occupation certificate relating to any building the subject of the complying development certificate,
- (e) the notification of the determination of an application for a subdivision certificate relating to any subdivision the subject of the complying development certificate and the endorsed plan of subdivision,
- (f) the notification of the determination of any application for a compliance certificate relating to the development the subject of the complying development certificate,
- (g) the decision of the Land and Environment Court in the case of an occupation certificate or subdivision certificate issued by the Court on appeal from a determination of the council,
- (h) details of approved alternative solutions relating to compliance certificates, together with details of the assessment methods used to establish compliance with the relevant performance requirements.